CLEPIK'S OFFICE U.S. DIST. COUNT AT HARMSONBURG, VA FILED

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA HARRISONBURG DIVISION

JUL 1 4 2009

JOHN F CORCCIRAN, CLERK
BY: 5 800

| UNITED STATES OF AMERICA, |))) | Case No. 5:09cr00005 |
|---------------------------|-------------|---|
| v. |) | COMPETENCY REPORT AND |
| PAUL ANTHONY GRANT, |) | RECOMMENDATION By: Hon. James G. Welsh |
| |)) | U.S. Magistrate Judge |

This matter comes before the undersigned for a report and recommendation concerning a mental competency proceeding filed pursuant to 18 U.S.C. §§ 4241, et seq. In accordance with the court's prior orders in this matter, an initial psychiatric assessment, dated May 12, 2009, was completed by a psychiatrist at FMC-Butner. After being received and filed under seal, counsel for the defendant was granted leave to have the report reviewed by an additional mental health examiner and a reasonable time to consider an additional mental health examination of the defendant's choosing. On July 13, 2009, counsel for the defendant represented in open court that no additional mental health examination will be requested on behalf of the defendant and that the defendant did not wish to present any evidence on the issue.

On the basis of a careful review of the FMC-Butner psychiatric evaluation report (which findings are incorporated herein by reference) and after hearing the views of counsel, the undersigned makes the following formal findings, conclusions and recommendations to which the defendant, by counsel, objected and excepted.

Findings

- 1. The defendant has the present ability to consult with his attorney;
- 2. The defendant has the present ability to consult with his attorney with a reasonable degree of rational and factual understanding and a rational and factual understanding of the proceedings against him in this matter (*See Drope. Missouri*; 420 U.S. 162, 171 (389, (1975); *Indiana v. Edwards*, ___ U.S. ___, 128 S.Ct. 2379, 2383 (2008));
- 3. The FMC-Butner report is consistent with psychiatric theory, research and practice;
- 4. The results of the FMC-Butner evaluation and the defendant's current clinical presentation are based on reliable psychiatric assessment procedures and testing results;
- 5. The defendant is not suffering from a mental disease or defect rendering him mentally incompetent to the extent he is unable to understand the nature and consequences of the proceedings filed against him, or properly to assist his attorney in his own defense;
- 6. The competency standard to plead guilty is the same as that to stand trial (*See Godinez v. Moran*, 509 U.S. 389, 398-401 (1993); *United States v. Locke*, 269 Fed. Appx. 292,294 (4th Cir. 2008);
- 7. The forgoing determinations were made by a preponderance of the evidence (See United States v. Locke, 269 Fed. Appx. at 293;
- 8. The defendant was at all times present in person and by counsel; and
- 9. The pretrial delays since March 9, 2009 are excluded from the time limits of the

Speedy Trail Act, 18 U.S.C. §§ 3161 et seq. (See Henderson v. United States, 476 U.S. 321, 330 (1986).

Recommended Disposition

Based on the above findings of fact, the undersigned RECOMMENDS that the court accept FMC-Butner evaluation, find the defendant COMPETENT TO STAND TRIAL, and the trial of this case be scheduled for a date convenient to the presiding district judge.

Notice to Parties

Notice is hereby given to the provisions of 28 U.S.C. § 636(b)(1)(C): Within ten (10) days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to such proposed findings and recommendations as provided by the rules of court. The presiding district judge shall make a *de novo* determination of those portions of the report or specified findings or recommendations to which objection is made. The presiding district judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the undersigned. The presiding district judge may also receive further evidence or recommit the matter to the undersigned with instructions. A failure to file timely written objections to these proposed findings and recommendations within ten (10) days could waive appellate review.

At the conclusion of the ten-day period, the Clerk is directed to transmit the record in this matter to the presiding United States district judge, and the clerk is further directed to transmit a copy of this Report and Recommendation to all counsel of record.

DATED: 13th day of July 2009.

/s/ James G. Welsh
United States Magistrate Judge